

Nurse's Lifting Restriction: Hospital Ruled Not Liable For Disability Discrimination.

The hospital knew the nurse had been diagnosed with multiple sclerosis when the hospital hired him. At that time his MS was in remission, he had no restrictions on lifting and he was fully able to perform all of his nursing duties.

Six months after being hired he was incapacitated by his MS and hospitalized for ten days. When discharged from the hospital his physician said he should not do any lifting.

The hospital's policy was that any employee out sick more than three days had to be cleared by the hospital's own occupational health department before returning to work.

The hospital's policy was also that when any employee had any work restriction imposed by the hospital's occupational health department, the employee's manager had to determine if the employee was able to return to work with the restriction.

The hospital's occupational health physician examined the nurse. He agreed with the nurse's physician that the nurse could not do any lifting. The nurse's nursing manager then concluded the nurse could not return to work because lifting was an essential function of his position as a hospital staff nurse.

Even though he had less than one year's service, the hospital gave the nurse a twelve-month medical leave of absence before terminating him. During that time the personnel department kept in contact with him about his medical condition, and learned that his MS had worsened.

He was given lists of non-nursing positions that required no lifting and given the chance to apply before the jobs were opened up to the general public, but he never made use of the opportunity.

After being terminated the nurse sued for disability discrimination. The Federal District Court judge let the case go to trial before a jury. The jury found no discrimination. The judge entered judgment in favor of the hospital. The U.S. Circuit Court of Appeals for the Seventh Circuit also sided with the hospital.

The hospital was correct to have a personnel policy that lifting is an essential function of a staff nurse's job. A nurse's job description includes turning patients in bed, assisting patients to and from the bathroom, helping patients walk and assisting patients who unexpectedly fall.

Sometimes others are available to assist a nurse with lifting, but sometimes because of staffing shortages or because an emergency arises a nurse may have to engage in physically strenuous lifting without assistance.

It is true that lifting only comprises about two percent of a nurse's workday, and nurses can when necessary ask for assistance.

However, at those times of the day when lifting is required, the ability to lift is essential to a nurse's job.

A device to assist a nurse with lifting is not a reasonable accommodation because it would not be any use in helping a patient walk down the hall or get to the bathroom.

The hospital made a list of its non-nursing positions available, but the nurse refused to apply.

UNITED STATES COURT OF APPEALS,
SEVENTH CIRCUIT, 2000.

The court said a hospital has the legal right to deem the ability to lift patients an essential function of a staff nurse's job. Federal regulations support an employer's judgment in making that decision, provided employees doing the job actually do have to lift and things can actually go wrong when an employee is unable to lift.

The lifting requirement has to be stated in the written job description before the job is advertised and before applicants are interviewed, and it must be applied uniformly across the board.

It is not reasonable accommodation for a hospital to be forced to let a nurse work as a staff nurse who cannot lift and assist patients as required. A hospital can if it chooses but does not have to let a nurse work with a lifting restriction and tell other employees to help. It is not reasonable for a hospital to have to expect that help will always be available any time a patient needs assistance, the court said.

It is required as reasonable accommodation for a hospital to offer a disabled employee the chance to apply for jobs where lifting is not an essential function, if such jobs are open and the employee is qualified and more qualified or more senior employees' rights are not violated.

The hospital must engage in an interactive process with the employee, as the hospital did in this case, the court said. A hospital must have two-way communication with a disabled employee to find out the precise limitations the employee has and how the employee or the physician feels those limitations can be met with reasonable accommodation. That does not necessarily mean the hospital must accept the employee's proposal, only that it must listen and consider what the employee or the physician has to say.

The opposite of an interactive process is a directive process. The courts see it as disability discrimination in and of itself when an employer determines the employee's limitations unilaterally and tries to dictate what is appropriate as reasonable accommodation. ***Lenker v. Methodist Hospital*, 210 F. 3d 792 (7th Cir., 2000).**